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This chapter provides an overview of the material addressed in Part I of this volume of the *Traffic Benchbook*. It also describes recent legislation directed at those who commit repeated violations of §625 and §904 of the Michigan Vehicle Code, and introduces certain terminology that is particularly important in criminal cases involving violations of Vehicle Code §625 and §904.

## 1.1 Scope Note

Volume 2, Part I of the *Traffic Benchbook* addresses §625 and §904 of the Michigan Vehicle Code,\* which set forth the criminal sanctions for various offenses involving drunk driving and driving with a suspended or revoked license. These offenses were targeted by the Michigan Legislature during its 1998 session; on October 16, 1998, the Legislature enacted 1998 PA 340–359, a package of new laws and amendments to the Vehicle Code intended to address offenders who repeatedly violate the state’s prohibitions against drunk or unlicensed driving.

Unless otherwise noted, this chapter and the four chapters that follow it describe the state of the law effective October 1, 1999, the effective date of most of the 1998 amendments to the Vehicle Code.\* In these chapters, the reader will find:

- Definitions for terms that occur throughout the Vehicle Code’s provisions regarding drunk or unlicensed driving (Chapter 1);
- Information about procedural matters that are unique to §625 and §904 offenses (Chapter 2);
- A list of the elements of and sanctions for each §625 and §904 offense (Chapters 3 and 4); and,
- Information about penalties for violation of vehicle sanctions that may be imposed upon persons who violate §625 and §904 of the Vehicle Code (Chapter 5).

The discussion in the foregoing chapters assumes that the offender is an adult. For information about traffic offenses involving minors, see Miller, *Juvenile Traffic Benchbook* (MJJ, 1999), which is published as a companion volume to the *Traffic Benchbook*.

\*MCL 257.625;  
MSA 9.2325 and  
MCL 257.904;  
MSA 9.2604.

\*Changes to the  
law added after  
September 1,  
1999 will not be  
reflected in the  
text, however.

Offenses involving vehicles other than private automobiles are also beyond the scope of the chapters in this part. For information about offenses involving snowmobiles, watercraft, and ORVs, see Volume 1 of the *Traffic Benchbook*. The *Traffic Benchbook* does not address offenses involving commercial motor vehicles.

Finally, the chapters in this part only contain information about the offenses set forth in §625 and §904 of the Vehicle Code, along with certain related offenses involving chemical tests for bodily alcohol content, and vehicle sanctions imposed as part of a sentence for a §625 or §904 offense. Drunk driving offenses appearing in other Michigan statutes are discussed elsewhere in the *Traffic Benchbook*. See, e.g., the following sections:

- Drunk driving causing injury to a pregnant woman and resulting in miscarriage or stillbirth under MCL 750.90d; MSA-- - Volume 2, Section 8.2.
- Felonious driving under MCL 752.191; MSA 28.661 - Volume 2, Section 9.1.

For information about drug-related offenses arising under the Controlled Substances Act, MCL 333.7101 et seq; MSA 14.15(7101) et seq., see *Managing a Trial Under the Controlled Substances Act* (MJI, 1995). A discussion of licensing sanctions imposed for violations of the Act appears at Section 15.8 of that benchbook.

## 1.2 Highlights of the 1998 Legislation

On October 16, 1998, the Michigan Legislature enacted 1998 PA 340–359,\* a package of new laws and amendments to the Vehicle Code intended to address two categories of “repeat offenders”:

- Drivers with two or more convictions under MCL 257.625; MSA 9.2325 within seven years, or three or more such convictions within ten years; and,
- Drivers who commit three or more moving violations within seven years during a period of license suspension or revocation under MCL 257.904; MSA 9.2604.

This legislation is designed to provide an early warning and deterrent to potential repeat offenders by a system of progressive punishment. Under the 1998 enactments, drivers who violate Vehicle Code §625 and §904 are subject to criminal penalties and licensing sanctions that become more severe with each repeat offense. Additionally, the 1998 enactments provide for limitations on the repeat offender’s access to vehicles, and create several new repeat offender crimes.

\*This package was later supplemented by “clean up” legislation passed during the 1999 session. See 1999 PA 21, 51–59, 73–77.

Most of the 1998 repeat offender enactments take effect October 1, 1999. However, certain provisions take effect June 1, 2000. See, e.g., provisions regarding registration denial in MCL 257.219, MSA 9.1919, discussed at Section 2.11(C).

The rest of this section highlights some of the major changes effected by the 1998 legislation.

## A. New Crimes

The 1998 legislation created a number of new criminal offenses that fall into two categories — driving offenses and violations of sentence conditions. These offenses take effect October 1, 1999. The driving offenses are:

- Child endangerment under MCL 257.625(7); MSA 9.2325(7). See Section 3.7 for discussion.
- Allowing an intoxicated person to operate a vehicle, causing death or serious impairment of a body function under MCL 257.625(2); MSA 9.2325(2). See Section 3.2 for discussion.
- Allowing a person to operate a vehicle with a suspended or revoked license, causing death or serious impairment of a body function under MCL 257.904(7); MSA 9.2604(7). See Section 4.4 for discussion.
- Driving with a suspended or revoked license, causing death or serious impairment of a body function under MCL 257.904(4)–(5); MSA 9.2604(4)–(5). See Sections 4.2–4.3 for discussion.

The following provisions penalize violations of sentence conditions imposed on drunk or unlicensed drivers:

- Violations of court orders for vehicle immobilization under MCL 257.904e(2)–(4); MSA 9.2604(5)(2)–(4). See Section 5.2.
- Ignition interlock violations under MCL 257.625l(2)–(3); MSA 9.2325(12)(2)–(3). See Section 5.1.
- Transfers to avoid vehicle forfeiture under MCL 257.233(3)–(4); MSA 9.1933(3)–(4). See Section 5.3.

## B. Tracking Misdemeanor Offenders

The 1998 legislation contains several amendments that increase the term of imprisonment for certain misdemeanor offenses from 90 to 93 days. See, e.g., MCL 257.625(8)(a); MSA 9.2325(8)(a) and MCL 257.904(3); MSA 9.2604(3), increasing the penalties for first OUIL and DWLS offenses to 93 days imprisonment. These amendments make a person's prior criminal history more likely to appear in state police records, which is critical to ensure that courts have adequate information for purposes of sentencing repeat drunk or suspended/revoked driving offenders.

Increasing misdemeanor penalties to 93 days makes state police records more complete because the 93 day penalty triggers the fingerprinting requirements of MCL 28.243; MSA 4.463. Under this statute, local law enforcement authorities must send two sets of fingerprints to the state police as follows:

- Within 72 hours after the arrest of a person for a felony or a misdemeanor for which the maximum penalty exceeds 92 days' imprisonment and/or a fine of \$1,000.00. MCL 28.243(1); MSA 4.463(1).
- Within 72 hours after entry of a misdemeanor conviction for a local ordinance violation for which the maximum penalty exceeds 92 days' imprisonment. MCL 28.243(2); MSA 4.463(2).

Local authorities have discretion to take the fingerprints of persons arrested for other misdemeanors. These fingerprints are only to be sent to the state police if the person is convicted of a misdemeanor. MCL 28.243(4); MSA 4.463(4). For traffic offenses, however, MCL 28.243(11); MSA 4.463(11) prohibits local authorities from sending the state police the fingerprints of persons accused and convicted under the Vehicle Code or a local ordinance substantially corresponding to a Vehicle Code unless the offense is punishable by more than 92 days' imprisonment or is an offense punishable by more than 92 days' imprisonment upon a subsequent conviction.

Under the foregoing provisions, state police records about a person's prior convictions will be incomplete to the extent that these convictions involve 90 day misdemeanor offenses where the local authorities did not fingerprint the offender and report the conviction. Increasing the penalty for a misdemeanor conviction to 93 days will address this problem.

The Legislature has also amended the statutes governing townships, cities, villages, and other municipalities, authorizing these entities to adopt ordinances with 93 day terms of imprisonment in cases where the ordinance would substantially correspond to a state statute that also imposes a maximum 93 day term of imprisonment. See, e.g., MCL 41.183(5), 117.4i(k); MSA 5.45(3)(5), 5.2082(k). These new 93-day penalties will trigger the fingerprinting requirements of MCL 28.243; MSA 4.463, facilitating the compilation of a criminal history in the event that a misdemeanor defendant later commits another offense.

### **C. Tougher Criminal Penalties and Licensing Sanctions for Repeat Offenders**

In addition to increasing many misdemeanor penalties to 93 days as described above, the 1998 legislation provides for enhancement of criminal penalties and licensing sanctions for drivers who repeatedly commit §625 or §904 offenses.

In general, any combination of any two §625 offenses within seven years will result in enhanced criminal penalties and driver's license revocation. Any combination of three §625 convictions within ten years will result in felony penalties and license revocation for a longer period of time.\*

With respect to §904 offenses, the 1998 legislation generally provides for increasing criminal penalties and periods of license suspension or revocation where the offender has multiple §904 suspension violations within seven years.

**Note:** Vehicle Code §625 and §904 offenses are not interchangeable in determining whether a person has prior convictions for purposes of enhancing criminal penalties or periods of license suspension.

## D. Limitations on Access to Vehicles

In addition to tougher criminal penalties and licensing sanctions, the 1998 legislation provides for vehicle sanctions to limit a repeat offender's access to vehicles. These sanctions are: vehicle immobilization, registration plate confiscation, vehicle forfeiture, and registration denial. All these vehicle sanction provisions except registration denial take effect October 1, 1999. Registration denial provisions take effect June 1, 2000.\*

### 1. Vehicle Immobilization

MCL 904e(1); MSA 9.2604(5)(1) authorizes courts to order vehicle immobilization "by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle." Depending upon the offense (or number of offenses), vehicle immobilization may be a mandatory sanction, or one imposed at the court's discretion.

**Mandatory Immobilization** — MCL 257.904d(1)–(2); MSA 9.2604(4)(1)–(2) require vehicle immobilization upon conviction of the following violations of §625 and §904:

- Any violation of §904(4) or (5) (DWLS causing death or serious impairment of a body function).
- A moving violation committed while driving with a suspended/revoked license and occurring within seven years of two or more prior suspensions, revocations, or denials imposed under §904(10), (11), or (12) (which impose additional licensing sanctions on persons who commit moving violations while driving with a suspended/revoked license).
- Any violation of §625(4) or (5) (OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function).

\*Only one "zero tolerance" violation under §625(6) may be included in these combinations of offenses, however. See Section 1.4(G)(1).

\*See Sections 2.5 and 2.11 for a detailed discussion of procedures regarding vehicle sanctions.

\*The listed prior convictions are taken from Vehicle Code §904d(8).

- A violation of §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment) within seven years after one prior conviction or within ten years after two or more prior convictions of any of the following offenses under a Michigan law, or under a substantially corresponding local ordinance or law of another state:\*
- OUIL/OUID/UBAC under §625(1).
- OWI under §625(3).
- OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function under §625(4)–(5).
- Zero tolerance violations under §625(6); however, only one such conviction may count as a prior conviction for purposes of immobilization.
- Child endangerment under §625(7).
- Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.
- Former §625(1) or (2) or former §625b. Former §625(1) provided criminal penalties for OUIL and OUID. Former §625(2) prohibited driving with a blood alcohol content of 0.10 percent or more. Former §625b provided criminal penalties for OWI.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

**Immobilization in the Court’s Discretion** — The court has discretion to order immobilization upon conviction of the following offenses:

- First offenses under §625(1), (3), or (7) (OUIL, OUID, UBAC, OWI, or child endangerment).
- A moving violation committed while driving with a suspended/revoked license and occurring within seven years of a prior suspension, revocation, or denial imposed under §904(10), (11), or (12) (which impose additional licensing sanctions on persons who commit moving violations while driving with a suspended/revoked license).

## 2. Registration Plate Confiscation

MCL 257.904c; MSA 9.2604(3) requires police to immediately confiscate and destroy the vehicle registration plates of drivers who are detained for offenses for which vehicle immobilization is *required*. These drivers are issued a temporary vehicle registration plate, which is valid until the charges against the driver are dismissed, the driver pleads guilty or nolo contendere to the charges, or the charges are adjudicated.

See the above discussion for a list of offenses requiring vehicle immobilization.

### 3. Vehicle Forfeiture

Vehicle forfeiture can be imposed at the court's discretion for various drunk driving or DWLS offenses under §625 and §904 of the Vehicle Code. These offenses are listed in MCL 257.625n; MSA 9.2325(14), as follows:

- OUIL/OUID/UBAC under §625(1), occurring within seven years of one prior conviction or within ten years of a second or subsequent prior conviction.
- OWI under §625(3), occurring within seven years of one prior conviction or within ten years of a second or subsequent prior conviction.
- OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function under §625(4)–(5).
- Child endangerment under §625(7).
- DWLS causing death or serious impairment of a body function under §904(4)–(5).

### 4. Registration Denial

Effective June 1, 2000, the Secretary of State shall refuse issuance of a certificate of title, a registration, or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee or co-lessee is suspended, revoked, or denied for one of the following offenses:

- A third or subsequent violation of §625 or §625m\* or a local ordinance substantially corresponding to these sections.
- A fourth or subsequent suspension or revocation of a driver's license under §904.

See MCL 257.219(1)(d), (2)(d); MSA 9.1919(1)(d), (2)(d).

### E. Attempted Vehicle Code Violations

The 1998 legislation requires that attempted traffic offenses be treated as completed offenses for purposes of imposing criminal penalties, licensing sanctions, or vehicle sanctions. MCL 257.204b; MSA 9.1904(2) was added to the Vehicle Code, providing that:

“(1) When assessing points, taking licensing or registration actions, or imposing other sanctions under this act for a conviction of an attempted violation of a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, the secretary of state or the court shall treat the conviction the same as if it were a conviction for the completed offense.

\*Section 625m concerns operating a commercial motor vehicle with an unlawful bodily alcohol content. A systematic discussion of commercial vehicle offenses is beyond the scope of this benchmark.

“(2) The court shall impose a criminal penalty for a conviction of an attempted violation of this act or a local ordinance substantially corresponding to a provision of this act in the same manner as if the offense had been completed.”

See Section 7.1 for more discussion of this statute.

## F. Authority to Order Licensing Sanctions Consolidated in Secretary of State

Prior to October 1, 1999, courts and the Secretary of State had statutory authority to order licensing sanctions for certain offenses, including OUIL, UBAC, and OUIL/OWI causing death or serious injury. For arrests after October 1, 1999, the authority to impose licensing sanctions has been consolidated in the Secretary of State in *all* cases, *except* for:

- Drug suspensions ordered under the Public Health Code, MCL 333.7408a; MSA 14.15(7408a); or,
- No proof of insurance convictions, MCL 257.328; MSA 9.2028.

On licensing sanctions imposed by the Secretary of State, see, e.g., MCL 257.319(8); MSA 9.2019(8) and MCL 257.303(2)(c); MSA 9.2003(2)(c).

## 1.3 Note on Pending Legislation

As of September 1, 1999, a number of bills were pending in the Michigan Legislature that would further amend the Vehicle Code’s provisions governing drunk driving offenses and procedures. These are:

- **SB 19:** This bill would amend MCL 257.625a(2)(b); MSA 9.2325(1)(2)(b) to broaden the admissibility of the results of preliminary chemical breath tests.\* As of September 1, 1999, the use of such test results at trial as evidence of the defendant’s breath alcohol content is limited to situations in which a party seeks to rebut testimony elicited by an opponent on cross-examination of the party’s witness. The proposed amendment would make test results generally admissible as evidence of the defendant’s breath alcohol content.

SB 19 would also amend MCL 257.625a(10); MSA 9.2325(1)(10) to broaden the admissibility of a person’s refusal to submit to a chemical test as provided under the Vehicle Code’s “implied consent” provisions.\* As of September 1, 1999, such a refusal is only admissible to show that a test was offered. The proposed amendment would make the refusal admissible as evidence of the defendant’s innocence or guilt.

\*See Section 2.8(A) for information on this issue.

\*See Section 2.8(D) for information on this issue.



- **HB 4350 and 4351:** These tie-barred bills would lower the bodily alcohol content level for drunk driving from 0.10 grams to 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. The new standard would apply to the following Vehicle Code provisions:
  - Those prohibiting the Secretary of State from issuing a license to a person who is an habitual violator of the criminal laws relating to operating a vehicle while impaired by or under the influence of alcohol;
  - Those prohibiting a person from operating a vehicle under specified conditions;
  - Those prohibiting a vehicle owner from knowingly permitting the vehicle to be operated by a person who is under the influence of alcohol;
  - Those describing when a person is considered to have given consent to chemical tests of his or her blood, breath, or urine; and,
  - Those defining “unlawful alcohol content.”

In the following instances, HB 4350 and 4351 would change the blood alcohol content standard from 0.07 to 0.05 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine:

- In provisions prohibiting a person less than 21 years of age from operating a vehicle with “any bodily alcohol content,” i.e., an alcohol content of not less than 0.02 grams or more than 0.05 grams;
- In provisions governing chemical tests and analyses of a person’s blood, urine, or breath;
- In provisions describing when a person is considered to have given consent to chemical tests of his or her blood, breath, or urine; and,
- In provisions prohibiting a person from operating a commercial motor vehicle.

Additionally, Offense Variable 18 of the sentencing guidelines would be amended to reflect the foregoing lower bodily alcohol content levels.\*

- **HB 4617:** This bill would amend the UBAC provisions of Vehicle Code §625(1) to provide for two levels of this offense:
  - Driving with an alcohol content of 0.10 grams or more but less than 0.20 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine; and,
  - Driving with an alcohol content of 0.20 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

\*See Section 2.9(F)(2) for discussion of other pending legislation concerning the sentencing guidelines.

This bill would provide for increased penalties for driving with a bodily alcohol content of 0.20 grams or more.

## 1.4 Definitions Commonly Used in §625 and §904 of the Vehicle Code

### A. “Controlled Substance”

\*For more complete discussion of “controlled substances,” see *Managing a Trial Under the Controlled Substances Act*, Section 1.6 (MJI, 1995).

“Controlled substance” for purposes of the Michigan Vehicle Code means “a controlled substance or controlled substance analogue as defined in [MCL 333.7104; MSA 14.15(7104), the Controlled Substances Act].” MCL 257.8b; MSA 9.1808(2). The Michigan Board of Pharmacy classifies drugs as “controlled substances” under the Controlled Substances Act according to five schedules set forth in MCL 333.7211–.7220; MSA 14.15(7211–7220). These schedules contain many substances that have a potential for or history of abuse, including narcotics (e.g., heroin, morphine, methadone) hallucinogenic drugs (e.g., LSD, marijuana, mescaline, peyote), and cocaine.\*

### B. “Conviction”

\*See also “prior conviction” below.

MCL 257.8a; MSA 9.1808(1) defines “conviction” as “a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation....”\*

\*Former MCL 257.625(6), MSA 9.2325(6). Current §625(8) contains a similar provision.

In *People v Vezina*, 217 Mich App 148, 151 (1996), the Court of Appeals distinguished a “violation” of the OUIL statute from a “conviction” for purposes of enhancing the penalties for a repeat offender. At the time at issue in this case, the OUIL statute\* provided for enhanced penalties where the “violation” in question occurred within seven years of a prior OUIL “conviction.” Rejecting the defendant’s argument that the word “violation” in the statute is synonymous with “conviction,” the Court held that a “violation” occurs when the unlawful act takes place. Thus, OUIL penalties for a violation must be enhanced if the defendant’s wrongful act occurred within seven years of a prior conviction.

### C. “Generally Accessible” to Motor Vehicles

\*MCL 257.625(1), MSA 9.2325(1).

In a case involving the OUIL statute,\* the Court of Appeals noted that “a place where vehicles are routinely permitted to enter for the purpose of driving and parking” is “generally accessible to motor vehicles.” *People v Nickerson*, 227 Mich App 434, 440 (1998). In *Nickerson*, such a place included the pit area of a motor speedway where spectators could park upon payment of an admission fee. The Court in *Nickerson* further found that the statutory phrases “open to the general public” and “generally accessible to motor vehicles” in the OUIL statute specify two distinct alternative places other than highways where driving a vehicle under the influence of intoxicants is prohibited. *Id.*

## D. “Ignition Interlock Device”

An ignition interlock device measures alcohol concentration in a driver’s breath. It prevents a motor vehicle from being started at any time without first determining the driver’s breath alcohol level through a deep lung sample. The system is calibrated so that the vehicle may not be started if the breath alcohol level of the driver measures a level of 0.025 grams per 210 liters of breath. MCL 257.625(6); MSA 9.2325(12)(6).

See Section 2.10(C) on procedures for ordering installation of an ignition interlock device, and Section 5.1 on penalties for circumventing the device.

## E. “Motor Vehicle” and “Vehicle”

For purposes of the discussion in this chapter, MCL 257.33; MSA 9.1833 defines “motor vehicle” as follows:

“‘Motor vehicle’ means every vehicle that is self-propelled.... Motor vehicle does not include an electric patrol vehicle being operated in compliance with the electric patrol vehicle act.”

MCL 257.79; MSA 9.1879 defines “vehicle” as:

“Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks....”

**Note:** This part of Volume 2 of the *Traffic Benchbook* is concerned only with private automobiles. Offenses involving snowmobiles, watercraft, and ORVs are addressed in Volume 1. Commercial motor vehicles are beyond the scope of this benchbook.

## F. “Operating” a Vehicle

MCL 257.35a; MSA 9.1835(1) defines “operate” or “operating” as “being in actual physical control of a vehicle regardless of whether or not the person is licensed under [the Vehicle Code] as an operator or chauffeur.”

The Michigan Supreme Court considered the meaning of “operating” a vehicle in *People v Wood*, 450 Mich 399 (1995). In *Wood*, police found the defendant unconscious in his van at a restaurant drive-through window. The van’s engine was running, the transmission was in drive, and the defendant’s foot was on the brake pedal, which kept the van from moving. The Court held that the defendant was “operating” the vehicle for purposes of the OUIL statute, MCL 257.625(1), MSA 9.2325(1):

\*In so holding, the Court overruled *People v Pomeroy* (On Rehearing), 419 Mich 441 (1984).

“We conclude that ‘operating’ should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property. Once a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk.” 450 Mich at 404–405.\*

The Court of Appeals has affirmed OUIL convictions in cases where there was circumstantial evidence to prove that a defendant was operating a vehicle while under the influence of intoxicants at some time prior to arrest. See *People v Schinella*, 160 Mich App 213, 216 (1987) (defendant found in a car straddling a ditch with the engine turned off, under circumstances indicating attempts to dislodge the vehicle before police arrived), and *People v Smith*, 164 Mich App 767, 770 (1987) (defendant found unconscious in a car on the highway shoulder 1/4 mile from the nearest exit, with the transmission in park and the motor running).

See also CJI2d 15.11, 15.12 (OUIL/UBAL/OWI causing death, serious impairment of a body function), which state that “[o]perating means driving or having actual physical control of the vehicle.”

## G. “Prior Conviction”

Under the 1998 amendments to the Vehicle Code, the enhancement of criminal penalties and certain other sanctions for §625 and §904 violations depends upon whether the offender has any “prior convictions” as defined by these amendments. In considering an offender’s “prior convictions” for purposes of imposing enhancements, it is important to distinguish between drunk driving and suspended/revoked license violations. Offenses under §625 and §904 are generally not interchangeable in deciding whether a person has a “prior conviction” under the 1998 amendments.

### 1. “Prior Convictions” for §625 Offenses

The Vehicle Code contains two lists of prior convictions that will result in enhanced penalties for repeat offenders who violate §625. One list applies to the following penalties and sanctions:

- Imposition of criminal penalties (jail terms, fines) under MCL 257.625(23); MSA 9.2325(23);
- Orders for vehicle immobilization under MCL 257.904d(8); MSA 9.2604(4)(8); and,
- Driver license suspensions under MCL 257.319(16)–(18); MSA 9.2019(16)–(18).

The other list applies to license revocation under MCL 257.303(2); MSA 9.2003(2).

In cases involving §625 offenses, the definition of “prior conviction” is the same for purposes of imposing criminal penalties, vehicle immobilization, and driver’s license suspension. “Prior conviction” in these three contexts means a conviction for any of the following violations or attempted violations, whether under a law of the State of Michigan, a local ordinance substantially corresponding to a Michigan law, or a law of another state substantially corresponding to a Michigan law:\*

- OUIL, OUID, or UBAC under §625(1).
- OWI, under §625(3).
- OUIL, OUID, UBAC, or OWI causing death of another, under §625(4).
- OUIL, OUID, UBAC, or OWI causing serious impairment of a body function of another, under §625(5).
- Being under 21 years of age and operating a vehicle with any bodily alcohol content (“zero-tolerance violations”), under §625(6). However, only one violation or attempted violation of §625(6) or a corresponding statute or ordinance from another jurisdiction may be counted as a prior conviction.\* MCL 257.625(24), 257.904d(8)(a)(i), 257.319(17); MSA 9.2325(24), 9.2604(4)(8)(a)(i), 9.2019(17).
- Child endangerment, under §625(7).
- Operating a commercial motor vehicle with an unlawful bodily alcohol content, under §625m.
- Former §625 (1) or (2) or former §625b. Former §625(1) provided criminal penalties for OUIL and OUID. Former §625(2) prohibited driving with a blood alcohol content of 0.10 percent or more. Former §625b provided criminal penalties for OWI.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

If two or more of the above convictions arise out of the same transaction, only one conviction shall be used to determine whether the defendant has a prior conviction. MCL 257.625(25), 257.904d(9), 257.319(18); MSA 9.2325(25), 9.2604(4)(9), 9.2019(18).

The prior convictions that must be considered for purposes of license revocation under MCL 257.303(2)(c) and (f); MSA 9.2003(2)(c) and (f) are somewhat different from the prior convictions listed above. In deciding whether to revoke the license of a repeat offender under §303(2), the Secretary of State will consider prior convictions under Vehicle Code §904(4) or (5) (DWLS causing death or serious impairment of a body function) in addition to

\*See below for a definition of “substantially corresponding” laws or local ordinances.

\* An exception to this rule exists where the offender has multiple “zero tolerance” violations. See §625(11)(b).

the convictions listed above. See Section 2.10(B) for more information about license revocation in drunk driving cases.

## 2. Section 904 Offenses

The 1998 amendments to the Vehicle Code impose enhanced licensing sanctions for multiple offenses committed while driving with a suspended/revoked license in violation of Vehicle Code §904. Those who unlawfully operate a vehicle or commit a moving violation while driving with a suspended/revoked license are subject to mandatory additional periods of suspension or revocation under §904(10)–(12). However, an offense occurring during a first-time suspension for failing to appear in court or failing to comply with a judgment under MCL 257.321a; MSA 9.2021(1) will not count as a prior offense for purposes of enhancement under §904(10)–(12). This exemption for an FAC/FCJ suspension violation applies only once during a person’s lifetime; if there is a subsequent FAC/FCJ suspension violation, both it and the first violation are counted for purposes of enhancement. MCL 257.904(18); MSA 9.2604(18).

In addition to enhanced licensing sanctions, persons who commit multiple offenses while driving with a suspended/revoked license are also subject to increasing criminal penalties and vehicle sanctions. See, e.g., §904(3) (providing enhanced criminal penalties for repeat DWLS offenders) and §904d(2) (providing periods of vehicle immobilization that increase with the number of multiple offenses within the past seven years).

### H. “Serious Impairment of a Body Function”

“Serious impairment of a body function” is defined in the following contexts within the Michigan Vehicle Code:

- OUIL/OUID/UBAC/OWI causing serious impairment of a body function, under MCL 257.625(5); MSA 9.2325(5);
- Driving while license suspended or revoked and causing serious impairment of a body function, under MCL 257.904(5); MSA 9.2604(5); and,
- Allowing another person to drive with license suspended or revoked, where the other person causes serious impairment of a body function, under MCL 257.904(7); MSA 9.2604(7).

The foregoing statutes all define “serious impairment of a body function” to include (without limitation) one or more of the following injuries:

- Loss or lost use of a limb.
- Loss or lost use of a foot, hand, finger, or thumb.
- Loss or lost use of an eye or ear.
- Loss or substantial impairment of a bodily function.

- Serious visible disfigurement.
- A comatose state that lasts for more than 3 days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

## I. “Substantially Corresponding” Ordinance or “Law” of Another “State”

Many Vehicle Code provisions authorize enhancement of penalties for repeat offenders based upon prior convictions under other jurisdictions’ statutes or ordinances that “substantially correspond” to Michigan statutes. See, e.g., MCL 257.303(2); MSA 9.2003(2), authorizing the Secretary of State to revoke a driver’s license upon receipt of records of conviction under “a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state.” To fully understand such provisions, the terms “substantially corresponding,” “law of another state,” and “state” must be defined.

### 1. “Substantially Corresponding”

In *Johnson v Secretary of State*, 224 Mich App 158 (1997), the Court of Appeals considered the meaning of “substantial correspondence” in determining whether a driver convicted under Michigan’s OUIL statute would be subject to license revocation as a repeat offender based on a previous conviction under a Wisconsin drunk driving statute. The Court noted that the offense of drunk driving was defined in similar terms under both state statutes at issue; however, violation of the Wisconsin statute constituted a civil infraction for which no jail term would be imposed. Nonetheless, the Court found that the Wisconsin statute was “substantially corresponding” to Michigan’s OUIL statute, and upheld the Secretary of State’s decision to revoke the driver’s license. Despite the difference in the categorization of the Michigan and Wisconsin offenses, the Court noted that: 1) it is the offense rather than the penalty that must correspond to the Michigan statute; 2) the procedures for adjudicating first offense OUIL violations in Michigan and Wisconsin were similar; 3) the driver was afforded procedural protections similar to those in a criminal proceeding; and, 4) like Michigan, Wisconsin provides criminal penalties for second OUIL offenses.

See also *Kutzli v Secretary of State*, 152 Mich App 38, 41 (1986) (Another state’s statute substantially corresponds to a Michigan statute where it contains language similar to the Michigan statute or proscribes the same conduct as the Michigan statute; procedures by which a conviction is obtained are not determinative).

## **2. “Law of Another State”**

The Vehicle Code defines the term “law of another state” to mean “a law *or ordinance* enacted by another state or by a local unit of government in another state.” MCL 257.24c; MSA 9.1824(3) [Emphasis added]. Under this definition, violations of local ordinances in other states may be considered for purposes of penalty enhancement under repeat offender provisions that encompass offenses committed under the “law of another state.”

## **3. “State”**

Under the Vehicle Code, a “state” is “any state, territory, or possession of the United States, Indian country as defined in 18 USC 1151, the District of Columbia, or any province of the Dominion of Canada.” MCL 257.65; MSA 9.1865.